



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2016-0529; FRL-9953-34-Region 7]

**Approval of Missouri's Air Quality Implementation Plans and
Operating Permits Program; Greenhouse Gas Tailoring Rule and
Non-substantive Definition and Language Changes**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) and the 40 CFR part 70 operating permits program. EPA is approving revisions to two Missouri rule(s) entitled, "Construction Permits Required," and "Operating Permits." This approval action is consistent with the July 12, 2013, U.S. Court of Appeals for the District of Columbia and the June 23, 2014, U.S. Supreme Court actions regarding Greenhouse Gas Prevention of Significant Deterioration and Title V Permitting. This action makes non-substantive changes to definitions, and language clarifications.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2016-0529, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez at (913) 551-7041, or by email at gonzalez.larry@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA taking?

I. What is Being Addressed in this Document?

EPA is approving revisions to the Missouri SIP and Operating Permits Program requested from four separate requests. In the first request dated August 8, 2011, the State of Missouri asked that EPA amend the SIP and the state’s operating permits program to include rule revisions that incorporate Federal permitting requirements for greenhouse gas emissions under state rule 10 CSR 10-6.065.

In the second request, also dated August 8, 2011, the State of Missouri asked that EPA amend the SIP to incorporate Federal permitting requirements to address new construction projects that emit 100,000 tons per year or more of greenhouse gases, as well as clarifying some rule text.

In the third request dated August 31, 2012, the State of Missouri asked that EPA amend the SIP to include recently promulgated revisions to the state rule 10 CSR 10-6.065 in order to defer for a period of three years the application of Title V permitting to carbon dioxide emissions from biogenic sources. In

addition to the biogenic deferral language, Missouri included non-substantive edits and minor administrative rule revisions in this submission. For example, Missouri relabeled 10 CSR 10-6.065(3)(A)5 to 10 CSR 10-6.065(3)(B), and reworded the following in that same subsection "40 CFR part 63, subpart EEE" to "40 CFR 63, subpart EEE."

On July 14, 2016, the State of Missouri modified the 2011 and 2012 requests in a letter to EPA. The letter addresses the court directed revisions to EPA's GHG permitting provisions. Specifically, in the July 14, 2016, letter, Missouri identified regulatory language of the earlier submittals that it was withdrawing its request to EPA to approve into the SIP and notified EPA that the state will update its rules in the future to remove those provisions. The State explained that these changes to their earlier submittals are a result of court decisions by the Supreme Court (*Utility Air Regulatory Group v. EPA*, June 23, 2014) and the U.S. Court of Appeals for the District of Columbia (*Coalition for Responsible Regulation, Inc. et al. v. EPA*, April 10, 2015), in which the courts vacated certain permitting requirements that were included in Missouri's August 8, 2011, submission. In the July 2016 submittal, the state clarified this earlier request to EPA as follows:

1) Missouri requested that in 10 CSR 10-6.060(8)(A), not include as part of the Missouri SIP the phrase "including the revision published at 75 FR 31606-07 (effective August 2, 2010)." Instead subsection (8)(A) will read ". . . promulgated as of July 1, 2009 are hereby incorporated . . ."

2) Missouri requested that in 10 CSR 10-6.6065(2)(A)2., not include the words "Except that:" and do not include the subparagraphs (2)(A)2.A. and (2)(A)2.B. as part of the Missouri SIP.

In addition, Missouri requested that EPA only include into the Missouri SIP the non-substantive wording clarifications submitted on August 31, 2012, without the biogenic deferral wording revisions because the biogenic deferrals had expired.

These requested and remaining revisions to Missouri's earlier submittals are consistent with the changes in Federal permitting requirements that were necessitated by the two earlier mentioned court decisions. These changes will make Missouri's GHG permitting requirements included in the SIP consistent with current Federal requirements.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submissions have met the public notice requirements of SIP submissions in accordance with 40 CFR 51.102. The submissions also satisfy the completeness criteria

of 40 CFR part appendix V. In addition, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is approving the request to amend the Missouri SIP and operating permits program by approving the State's request to amend 10 CSR 10-6.060, and 10 CSR 10-6.065 to align the State's rule with EPA's GHG Tailoring rule, streamline the public notice procedures to align them with similar procedures in the EPA rules, and allows the flexibility to publish notices on the internet.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri Regulations described in the direct

final amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 21, 2016.

Mark Hague,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA - Missouri

2. Section 52.1320(c) is amended by revising entries 10 CSR 10-6.060 and 10 CSR 10-6.065 under subheading "Chapter 6" to read as follows:

§ 52.1320 Identification of plan.

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(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				

Missouri citation	Title	State effective date	EPA approval date	Explanation
10-6.060	Construction Permits Required	08/30/11	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	<p>Provisions of the 2010 PM_{2.5} PSD - Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved.</p> <p>Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved.</p> <p>In addition, we have not approved Missouri's rule incorporating EPA's 2007 revision of the definition of "chemical processing plants" (the "Ethanol Rule," 72 FR 24060 (May 1, 2007) or EPA's 2008 "fugitive emissions rule," 73 FR 77882 (December 19, 2008)).</p> <p>Although exemptions previously listed in 10 CSR 10-6.060 have been transferred to 10 CSR 10-6.061, the Federally-approved SIP continues to include the following exemption, "Livestock and livestock handling systems from which the only potential contaminant is odorous gas."</p> <p>Section 9, pertaining to hazardous air pollutants, is not SIP approved.</p> <p>EPA is not approving in subsection (8)(A) the phrase "including the revision published at 75 FR 31606-07 (effective August 2, 2010)."</p>

Missouri citation	Title	State effective date	EPA approval date	Explanation
* * * * *				
10-6.065	Operating Permits	08/30/11	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	EPA has not approved Section (4) as part of the SIP. EPA is not approving in paragraph (2) (A)2 the words, "except that" and is not approving subparagraphs (2) (A)2.A. and (2) (A)2.B.
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PART 70 - STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Appendix A to part 70 is amended by adding paragraph (ff) under Missouri to read as follows:

Appendix A to Part 70 - Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

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(ff) The Missouri Department of Natural Resources submitted revisions to CSR on April 28, 2011. We are approving this rule except for Section (4) which relates to the State Basic

Operating permits, and we are not approving in paragraph (2) (A)2 the words, "except that" and are not approving subparagraphs (2) (A)2.A. and (2) (A)2.B. This approval is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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[FR Doc. 2016-23599 Filed: 9/30/2016 8:45 am; Publication Date: 10/3/2016]